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10/597,910

08/11/2006

James Heselden

5455-001 NATL

7784

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DLA PIPER US LLP

ATTN: PATENT GROUP

1200 NINETEENTH STREET, NW

WASHINGTON, DC 20036

EXAMINER

KRECK, JOHN J

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

08/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/597,910

Applicant(s)

HESELDEN, JAMES

Examiner

John Kreck

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The preliminary amendment is entered.

Claims 1-38 are pending.

### ***Claim Objections***

1. Claim 5 is objected to because of the following informalities: claim 5 lacks antecedent basis for "insert"—this term should be deleted. Appropriate correction is required.
2. Claim 7 is objected to because of the following informalities: claim 7 lacks antecedent basis for "insert"—this term should be deleted. Appropriate correction is required.

### ***Drawings***

3. Figures 1-3 --at least-- should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the façade or insert comprising a secondary cage structure with pivoting walls—as called for in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-6, 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ragazzo (U.S. Patent number 5,636,938).

Ragazzo describes the cage structure (see, e.g. figures 5 and 1) comprising opposed side walls (3 and 4) connected by opposed end walls (e.g. 7 and 5), the structure having on at least one side or end wall a façade (near or at 2 or 12) spaced from the wall to accommodate a surface effect material (9) as claimed.

RE claim 2: mesh is disclosed.

RE Claim 5, the secondary cage is plainly shown in figure 5.

RE claim 6: see figure 1.

Regarding independent claim 3:

Ragazzo describes the cage structure (see, e.g. figures 5 and 1), the structure having on at least one side or end wall an insert (7) spaced from the wall to accommodate a surface effect material as claimed.

RE claim 4: mesh is disclosed.

Regarding independent claim 9:

Ragazzo plainly describes the apparatus comprising means defining a covering surface as claimed (e.g. near or at 2, 11, 12). Element 14 also meets this broadly claimed structure—note that the claim requires “an apparatus for creating...apparatus comprising means defining a covering surface”

RE claims 10 and 11: Ragazzo discloses mesh. Official Notice is taken of the fact that mesh is movable.

RE claim 12: see figure 1.

RE claim 13: see figure 1.

RE claim 14: see figure 1.

RE claim 15: see figure 1.

RE claim 16: see figure 1.

RE claims 18-23: see col. 5, line 15.

RE claim 24: see col. 5, line 54.

RE claims 25-27: it is noted again that the claim is broadly defined: independent claim 9 requires “means defining a covering surface” Ragazzo describes several covering surfaces, including the surfaces illustrated near or at 2, 11, and 12—but also including, e.g. 14--- which can be positioned, connected, and detached.

Regarding claims 30-38: Ragazzo plainly shows the support surface and apparatus (e.g. covering surface 2, 11, or 12) connected to a support structure (i.e. the gabion).

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2. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated U.S. Patent Application Publication number 2003/0145526 to Rothfuss.

Claim 9 requires an apparatus for creating an outer surface...comprising means defining a covering surface. The means defining a covering surface is shown at 42 in Rothfuss

Further rejections based on Rothfuss would be cumulative to the rejections based on Ragazzo above.

3. Claims 1, 3, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hilfiker, et al. (U.S. Patent number 5,647,695).

Hilfiker describes the cage structure (see, e.g. figures 15-17) comprising opposed side walls (p3,p4) connected by opposed end walls (unnumbered), the structure having on at least one side or end wall a façade spaced from the wall to accommodate a surface effect material as claimed in claim 1

Regarding independent claim 3:

Hilfiker describes the cage structure (see, e.g. figures 15-17) the structure having on at least one side or end wall and an insert spaced from the wall to accommodate a surface effect material as claimed.

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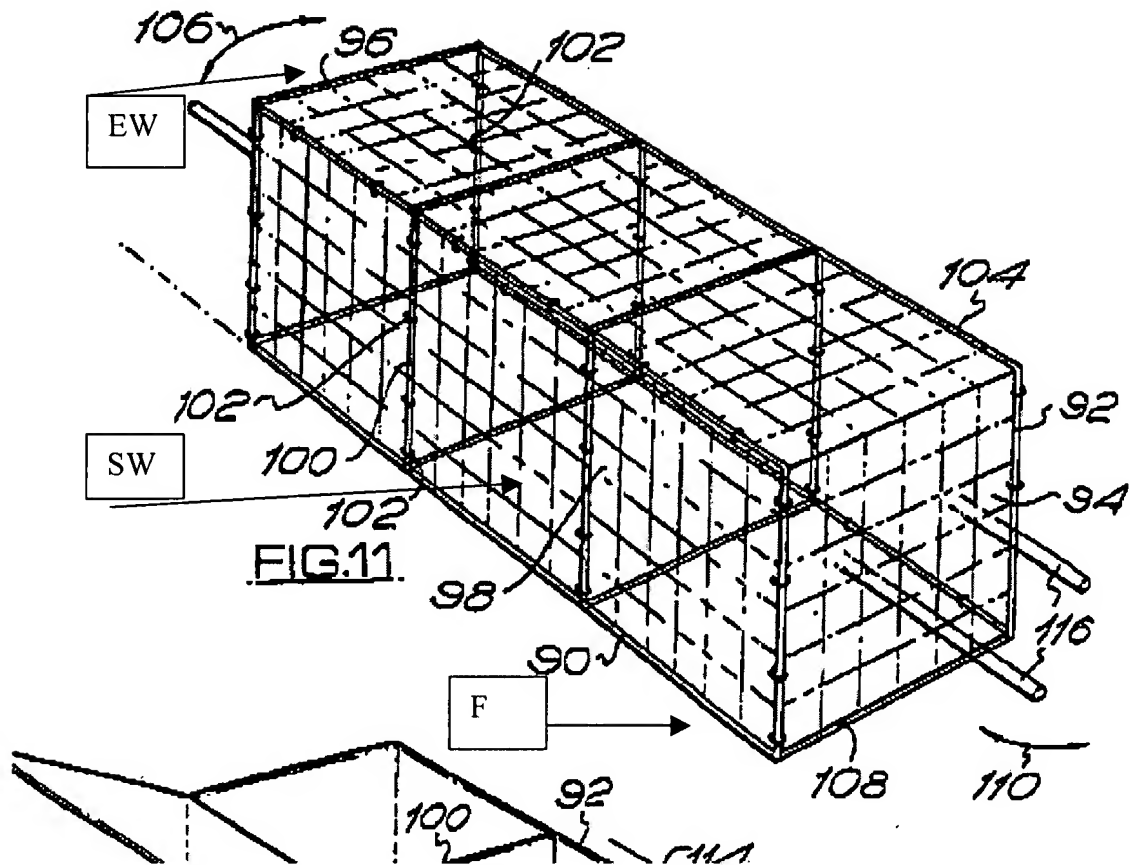
Claim 9 requires an apparatus for creating an outer surface...comprising means defining a covering surface. The means defining a covering surface is shown near or at 48 or 50.

Further rejections based on Hilfiker would be cumulative to the rejections based on Ragazzo above.

4. Claims 1, 3, 6, 7, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Heselden (U.S. Patent number 5,472,297).

Heselden —e.g. figure 11—reproduced below--describes the cage structure comprising opposed side walls (marked "SW" by examiner) connected by opposed end walls ("EW") , the structure having on at least one side or end wall a façade ("F") spaced from the wall to accommodate a surface effect material as claimed in claim 1. Note, Heselden shows what might be conventionally considered as three connected gabions, however, the endmost structure (F) meets the structural limitations of the façade.





RE claims 6 and 7: Heselden plainly shows the pivotal connections at or near

102.

RE independent claim 3:

Heselden describes the cage structure (see, e.g. figure 11) the structure having on at least one side or end wall and an insert spaced from the wall to accommodate a surface effect material as claimed.

RE independent claim 9:

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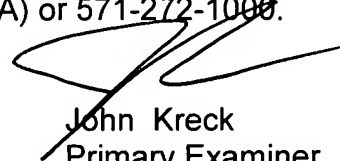
Claim 9 requires an apparatus for creating an outer surface...comprising means defining a covering surface. The means defining a covering surface is shown near 108.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042.

The examiner can normally be reached on Mon-Fri 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John Kreck  
Primary Examiner  
Art Unit 3673

3 August 2007